

State of South Dakota

EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

292L0020

HOUSE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to repeal certain mandatory minimum sentences for driving
2 under the influence, to expand those substances under which a person may be found to be
3 under the influence, and to revise certain driving under the influence provisions for clarity
4 and consistency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. That § 32-23-1 be amended to read as follows:

7 32-23-1. No person may drive or be in actual physical control of any vehicle while:

- 8 (1) There is 0.08 percent or more by weight of alcohol in that person's blood as shown
9 by chemical analysis of that person's breath, blood, or other bodily substance;
- 10 (2) Under the influence of an alcoholic beverage, marijuana, or any controlled drug or
11 substance not obtained pursuant to a valid prescription, or any combination of an
12 alcoholic beverage, marijuana, or such controlled drug or substance;
- 13 (3) Under the influence of ~~marijuana~~ or any controlled drug or substance obtained
14 pursuant to a valid prescription, or any other substance, to a degree which renders the
15 person incapable of safely driving; ~~or~~
- 16 (4) Under the combined influence of an alcoholic beverage and ~~marijuana~~ or any



1 controlled drug or substance obtained pursuant to a valid prescription, or any other
2 substance, to a degree which renders the person incapable of safely driving; or

3 (5) Under the influence of any substance ingested, inhaled, or otherwise taken into the
4 body as prohibited by § 22-42-15.

5 Section 2. That § 32-23-1.1 be amended to read as follows:

6 32-23-1.1. A law enforcement officer may, without a warrant, arrest a person for a violation
7 of the provisions of § 32-23-1 when ~~he~~ the officer has probable cause to believe that the person
8 to be arrested has been involved in a traffic accident and has violated the provisions of § 32-23-
9 1 and that such violation occurred prior to or immediately following such traffic accident.

10 Section 3. That § 32-23-1.2 be amended to read as follows:

11 32-23-1.2. Every person operating a ~~motor~~ vehicle which has been involved in an accident
12 or which is operated in violation of any of the provisions of this chapter shall, at the request of
13 a law enforcement officer, submit to a breath test to be administered by such officer. If such test
14 indicates that such operator has consumed alcohol, the law enforcement officer may require such
15 operator to submit to a chemical test in the manner set forth in this chapter.

16 Section 4. That § 32-23-1.3 be repealed.

17 ~~—32-23-1.3. Any person arrested for driving or being in actual physical control of a vehicle~~
18 ~~while the weight of alcohol in the blood of the arrested person is 0.08 percent or greater, shall~~
19 ~~be charged with a violation of § 32-23-1. The charge may be reduced or dismissed only if the~~
20 ~~prosecuting attorney states the reasons for reduction or dismissal in writing and on the record~~
21 ~~and files the reasons with the clerk of courts.~~

22 Section 5. That § 32-23-2 be amended to read as follows:

23 32-23-2. If conviction for a violation of § 32-23-1 is for a first offense, such person is guilty
24 of a Class 1 misdemeanor, and the defendant's driving privileges shall be revoked for not less

1 than thirty days. However, the court may in its discretion issue an order upon proof of financial
2 responsibility, pursuant to § 32-35-43.1, permitting the person to operate a ~~motor~~ vehicle for
3 purposes of ~~the person's~~ employment, attendance at school, or attendance at ~~court-ordered~~
4 counseling programs ~~during the hours of the day and the days of the week as set forth in the~~
5 ~~order~~. The court may also order the revocation of the defendant's driving privilege for a further
6 period not to exceed one year or restrict the privilege in such manner as it sees fit for a period
7 not to exceed one year.

8 Section 6. That § 32-23-2.1 be amended to read as follows:

9 32-23-2.1. Any person convicted of a first offense pursuant to ~~§ 32-23-2~~ § 32-23-1 with a
10 0.17 percent or more by weight of alcohol in ~~his~~ the person's blood shall, in addition to the
11 penalties provided in § 32-23-2, be required to undergo a court-ordered evaluation to determine
12 if the defendant ~~has an addiction to alcohol~~ is chemically dependent. The cost of such evaluation
13 shall be paid by the defendant.

14 Section 7. That § 32-23-3 be amended to read as follows:

15 32-23-3. If conviction for a violation of § 32-23-1 is for a second offense, such person is
16 guilty of a Class 1 misdemeanor, and the court shall, in pronouncing sentence, unconditionally
17 revoke the defendant's driving privilege for a period of not less than one year. However, upon
18 the successful completion of a ~~court-approved alcohol treatment~~ court-approved chemical
19 dependency counseling program, and proof of financial responsibility pursuant to § 32-35-43.1,
20 the court may permit the person to drive for the ~~purpose~~ purposes of employment ~~and may~~
21 ~~restrict the privilege by the imposition of such conditions as the court sees fit. If such person is~~
22 ~~convicted of driving without a license during that period, the person shall be sentenced to the~~
23 ~~county jail for not less than three days, which sentence may not be suspended, attendance at~~
24 school, or attendance at counseling programs.

Section 8. That § 32-23-4 be amended to read as follows:

32-23-4. If conviction for a violation of § 32-23-1 is for a third offense, the person is guilty of a Class 6 felony, and the court, in pronouncing sentence, shall unconditionally revoke the defendant's driving privileges for such period of time as may be determined by the court, but in no event less than one year from the date sentence is imposed or one year from the date of discharge from incarceration, whichever is later. ~~If the person is convicted of driving without a license during that period, he shall be sentenced to the county jail for not less than ten days, which sentence may not be suspended.~~ Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions of the license revocation for the term of such revocation. Upon the successful completion of a court-ordered counseling program, and proof of financial responsibility pursuant to § 32-35-43.1, the court may permit the person to operate a vehicle for the purposes of employment, attendance at school, or attendance at counseling programs.

Section 9. That § 32-23-4.3 be amended to read as follows:

32-23-4.3. The plea and election of method of trial by the accused shall be first taken only on the first part of the information described in § 32-23-4.2 but before a plea is made the accused shall be informed by the judge, in absence of the jury, of the contents of ~~his~~ the second part. There shall be entered in the minutes of the court the time and place when and where the judge so informed the accused, and like entry thereof shall be made in the judgment.

Section 10. That § 32-23-4.4 be amended to read as follows:

32-23-4.4. On a finding of guilty on the first part of the information described in § 32-23-4.2 a plea shall be taken and, if necessary, an election made on the second part and a trial thereon proceeded with, and until such time no information as to the second part of the information ~~shall~~ may be divulged to the jury. If the accused ~~shall have elected~~ elects a jury trial in the second part of the information, such trial may be had to the same or another jury as the court may direct.

Section 11. That § 32-23-4.6 be amended to read as follows:

32-23-4.6. If conviction for a violation of § 32-23-1 is for a fourth offense, or subsequent offenses thereafter, and the person has previously been convicted of a felony under § 32-23-4, the person is guilty of a Class 5 felony, and the court, in pronouncing sentence, shall unconditionally revoke the defendant's driving privileges for such period of time as may be determined by the court, but in no event less than two years from the date sentence is imposed or two years from the date of discharge from incarceration, whichever is later. ~~If the person is convicted of driving without a license during that period, he shall be sentenced to the county jail for not less than twenty days, which sentence may not be suspended.~~ Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions of the license revocation for the term of such revocation. Upon the successful completion of a court-ordered counseling program, and proof of financial responsibility pursuant to § 32-35-43.1, the court may permit the person to operate a vehicle for the purposes of employment, attendance at school, or attendance at counseling programs.

Section 12. That § 32-23-6 be amended to read as follows:

32-23-6. The fact that any person charged with a violation of § 32-23-1 is or has been ~~entitled to use~~ prescribed a drug under the laws of this state ~~shall~~ is not constitute a defense against any charge of violating ~~said section~~ § 32-23-1.

Section 13. That § 32-23-7 be amended to read as follows:

32-23-7. In any criminal prosecution for a violation of § 32-23-1 relating to driving a vehicle while under the influence of ~~intoxicating liquor~~ an alcoholic beverage, a violation of § 22-16-41, or a violation of § 22-16-42, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, breath, or other bodily substance gives rise to the following presumptions:

(1) If there was at that time five hundredths percent or less by weight of alcohol in the defendant's blood, it is presumed that the defendant was not under the influence of ~~intoxicating liquor~~ an alcoholic beverage;

(2) If there was at that time in excess of five hundredths percent but less than eight hundredths percent by weight of alcohol in the defendant's blood, such fact does not give rise to any presumption that the defendant was or was not under the influence of ~~intoxicating liquor~~ an alcoholic beverage, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant;

(3) If there was at that time eight hundredths percent or more by weight of alcohol in the defendant's blood, it is presumed that the defendant was under the influence of ~~intoxicating liquor~~ an alcoholic beverage.

Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0 cubic ~~centimeters~~ centimeter of whole blood or 2100 cubic centimeters of deep lung breath.

Section 14. That § 32-23-8 be amended to read as follows:

32-23-8. The provisions of § 32-23-7 ~~shall~~ may not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of ~~intoxicating liquor~~ an alcoholic beverage.

Section 15. That § 32-35-43.1 be amended to read as follows:

32-35-43.1. The suspension or revocation of driving privileges required for a violation of §§ 22-16-41, 32-23-1, 32-24-3, 32-35-113, and 32-35-120 shall remain in effect and the Department of Public Safety may not issue to the person any renewal of driving privileges nor may the court issue any driving permit until the person gives and thereafter maintains proof of financial responsibility for the future.